

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

United States of America,)	
)	
)	Criminal No. 4:17-cr-108-BHH
v.)	Civil No. 4:23-cv-2323-BHH
)	
Alexis Kirt,)	
)	<u>ORDER</u>
Defendant/Movant.)	
)	

This matter is before the Court upon Alexis Kirt’s pro se motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255, wherein she asserts that defense counsel failed to file a direct appeal despite being asked to do so. The government filed a response in support of the motion, explaining that sentencing counsel admitted that she failed to file an appeal even when timely asked to do so by Defendant. *See United States v. Poindexter*, 492 F.3d 263, 273 (4 th Cir. 2007) (holding that an attorney is required to file a notice of appeal when unequivocally instructed to do so by his client). As such, the government now requests that the Court (1) grant relief to Kirt under § 2255, (2) vacate the sentence imposed on June 17, 2022, and (3) reimpose the same sentence, which would reinstate Defendant’s right to file a notice of appeal within fourteen days of the newly imposed sentence. (See ECF No. 2368.)

After review, and in consideration of the applicable law, the Court finds no hearing necessary because the government concedes that Kirt’s attorney failed to file a notice of appeal as directed, thereby prejudicing Kirt. *See Roe v. Flores-Ortega*, 528 U.S. 470 (2000) (explaining that “[a]s lawyer who disregards a defendant’s specific instruction to file a timely notice of appeal acts in a manner that is professionally unreasonable” and that a

presumption of prejudice applies when an attorney's deficient performance deprives defendant of an appeal). Furthermore, **the Court finds that Kirt is entitled to relief in the form of a belated appeal, and the Court hereby grants Kirt's motion filed pursuant to 28 U.S.C. § 2255** (ECF No. 2335). See, e.g., 2013 WI 1431658 (D. Md. April 8, 2013) (granting § 2255 motion and allowing belated appeal, without a hearing, where the government did not dispute the movant's allegation that counsel failed to comply with a request to file a notice of appeal). **Therefore, the Court vacates the judgment imposed on June 17, 2022, and orders the Clerk to enter an amended judgment from which Kirt may file a timely appeal.**

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

November 28, 2023
Charleston, South Carolina